IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 362 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NOORMAMAD HAMIR SAMA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 362 of 2001

MR NIRAV THAKKAR, for the Petitioner.

MS HARSHA DEVANI, APP, for Respondent No. 1

NOS. 2 TO 4 DELETED

MR RC KAKKAD for Respondent No. 5

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/09/2001

ORAL JUDGEMENT

1. By this revision application, the applicant seeks to challenge and order passed by learned Sessions Judge, Jamnager, in Criminal Misc. Application No.291 of 2001,

on August 16, 2001, cancelling the bail granted to the applicant while deciding Criminal Misc. Application No.100 of 2001, by order dated March 8, 2001.

2. A First Information Report came to be lodged against the present applicant, along with several other persons, for offences punishable under Sections 307, 325, 323 and 506(2) of Indian Penal Code and Section 135 of Bombay Police Act, on February 24, 2001. The offence took place on February 23, 2001 between 13.15 and 13.30 hours. The offence was registered vide C.R.-I No.18 of 2001 of Bhanvad Police station. Following that F.I.R., the applicant came to be arrested. The applicant, therefore, preferred Criminal Misc. Application No.100 of 2001 before the Sessions Court, at Jamnagar, and the Sessions Court vide order dated March 8, 2001, enlarged the applicant on bail, along with other applicants, upon certain conditions.

2.1 As per the F.I.R., the applicant, along with other co-accused persons, had caused severe injuries on the legs of the victim-Jusub Amad Fulani. The victim was admitted as an indoor patient and came to be discharged from the hospital in the month of March 2001. Later on, some complications developed and, ultimately, the injured expired on May 26, 2001. Postmortem was performed upon the dead body and the doctor performing postmortem opined that the death was caused due to remote complications of fracture of both the lower limbs.

3. Following the demise of the injured, an application was preferred before the Sessions Court bearing No.291 of 2001 for cancellation of bail under Section 439(2) of the Code of Criminal Procedure. The learned Sessions Judge, after considering the contentions raised before him, came to a conclusion that because death has ensued the injuries, it is in the interest of justice that the bail granted to the applicant be cancelled. He, therefore, cancelled the bail granted to the applicant earlier and directed that the applicant should surrender to the custody on or before August 18, 2001.

4. It is not in dispute that the applicant had surrendered to the custody as per the direction of the Sessions Court.

5. Learned advocate, Mr. Thakkar, appearing for the applicant submitted that the order impugned is per se against the provisions of law. He submitted that the deceased expired because of remote complications and,

therefore, the bail granted to the applicant could not have been cancelled. Mr. Thakkar submitted that the applicant has never been arrested for offence of murder. There is no allegation whatsoever about any tampering of evidence or misuse of liberty, nor it is a case that the bail was wrongly granted and, in facts of the case, it ought to have been granted. Under the circumstances, the order impugned herein may be set aside.

6. Learned advocate, Mr. Thakkar, also urged that the applicant has approached the Sessions Court for regular bail, but for interregnum period, this Court may enlarge the applicant on bail.

7. Learned Additional Public Prosecutor, Ms. Devani, has opposed this application, so also learned advocate, Mr. Kakkad, for the wife of the original complainant. Their contention is that, in this revision application, this Court cannot enter into the merits of the case. The Sessions Court has considered the relevant aspects and has deemed it fit not to enlarge the accused on bail and this revision, therefore, cannot be entertained. It is contended on behalf of the respondents that the victim died because of the injuries and whether the applicant is guilty of the offence is to be decided at the stage of trial. He is found to have been involved in a serious offence and, therefore, bail has rightly been cancelled.

8. Considering the rival side contentions, it has to be noted that, initially, when the bail was granted, the applicant was charge sheeted for the offences punishable under Sections 307, 325, 323 and 506(2) of Indian Penal Code and Section 135 of Bombay Police Act. Later on, after a period of about two months, the injured-victim expired because of remote complications and, therefore, the learned Sessions Judge came to a conclusion that bail granted to the applicant has to be cancelled. It would be pertinent to note that there is no allegation whatsoever of misuse of liberty by the applicant nor is there any allegation that any attempt is made to tamper with the evidence. It also requires to be noted that it is not the case of the respondents that bail granted to the applicant ought not to have been granted by the Sessions Court considering the facts situation prevailing then. That order has never been challenged on merits. No compelling or overwhelming circumstances are shown calling for cancellation of bail granted for the offences for which the bail is granted. The addition of charge of murder at a later point of time may permit the prosecution to re-arrest the accused for that offence,

but would not require cancelling of bail for the offences for which he has been enlarged on bail unless compelling and overwhelming circumstances are indicated. The cancellation of bail, therefore, by the learned Sessions Judge cannot be upheld.

8.1 It would, therefore, be a question whether the liberty can be granted to the applicant or not, after considering the merits of the case against the applicant under Section 302, IPC and that decision can be taken by the appropriate Sessions Court. At this stage, this court is concerned with a narrow question, whether because of the addition of Section 302, bail could have been cancelled which was granted for other offences. There is no doubt that the applicant can be re-arrested for the aggravated offence and his case for entitlement or disentitlement of bail can be considered by the Court as and when an application is made before that Court. As observed by the Apex Court in Prahlad Singh Bhati v. NCT, Delhi & Another, (2001) 4 SCC 280, "There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498-A, 306 and 406 IPC".

9. Under the circumstances, the revision application deserves to be allowed and the same is allowed. The order impugned herein cancelling bail stands quashed and set aside. As a necessary consequence, earlier order passed in Criminal Misc. Application No.100 of 2001 dated 8.3.2001, enlarging the applicant on bail for offences punishable under Sections 307, 325, 323, 506(2) and 114 of IPC and Section 135 of Bombay Police Act would stand restored. Rule is made absolutely, accordingly.

10. Direct service is permitted.

[A.L. DAVE, J.]

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